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Attorneys for Defendants
Milk Moovement, Inc. and Milk
Moovement LLC, and Counterclaim-
Plaintiff Milk Moovement, Inc.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAIRY, LLC, a Delaware Limited
Liability Company,

Plaintiff,

vs.

MILK MOOVEMENT, INC., a foreign
Corporation, and Milk Moovement
LLC, a Delaware Limited
Liability Company,

Defendants.

MILK MOOVEMENT, INC., a foreign
Corporation,

Counterclaim-
Plaintiff,

vs.

DAIRY, LLC, a Delaware Limited
Liability Company,

Counterclaim-
Defendant.

Case No. 2:21-cv-02233-WBS-AC

The Honorable William B.
Shubb

**MILK MOOVEMENT, INC.'S AND
MILK MOOVEMENT LLC'S ANSWER
TO FIRST AMENDED COMPLAINT
AND MILK MOOVEMENT, INC.'S
COUNTERCLAIMS**

JURY TRIAL DEMANDED

MILK MOOVEMENT'S ANSWER TO DAIRY'S FIRST AMENDED COMPLAINT

Defendants Milk Moovement, Inc. ("MMI") and Milk Moovement LLC (collectively, "Milk Moovement"), by and through their undersigned counsel, hereby respond to Plaintiff Dairy, LLC's ("Dairy" or "Plaintiff") First Amended Complaint ("FAC"). Milk Moovement denies all allegations in the FAC that are not expressly admitted below. Milk Moovement denies that Dairy is entitled to the requested relief or any other relief.

NATURE OF THE ACTION

1. Paragraph 1 consists of legal conclusions, not factual allegations, and no response is required. Milk Moovement acknowledges that Dairy purports to allege the claims identified in paragraph 1. Milk Moovement otherwise denies the allegations of paragraph 1.

2. Milk Moovement is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 2 of the FAC, and therefore denies the same.

3. Milk Moovement admits that the dairy industry is regulated in the United States. Milk Moovement admits the allegations in sentences two through four. Milk Moovement admits that Federal Milk Marketing Orders ("FMMOs") establish rules for when milk must be pooled, when pooling is optional and how much milk can be pooled from a particular facility for a given month. Except as expressly admitted, Milk Moovement denies the allegations in paragraph 3.

4. Milk Moovement is without sufficient knowledge or information to form a belief as to the truth or falsity of the

1 allegations of paragraph 4, and therefore denies the same.

2 5. Milk Moovement admits that MMI is a Canadian company
3 founded in 2018, and that MMI provides cloud-based software
4 solutions to the dairy industry. Milk Moovement denies the
5 remaining allegations in paragraph 5.

6 6. Milk Moovement denies the allegations contained in
7 paragraph 6.

8 7. Milk Moovement denies the allegations contained in
9 paragraph 7.

10 8. Milk Moovement denies the allegations contained in
11 paragraph 8.

12 **PARTIES**

13 9. Milk Moovement is without sufficient knowledge or
14 information to form a belief as to the truth or falsity of the
15 allegations of paragraph 9, and therefore denies the same.

16 10. Milk Moovement admits that MMI is a Canadian
17 corporation organized under the Canada Business Corporations Act,
18 with its principal place of business located at 1505 Barrington
19 Street, Suite 0100, Halifax, Nova Scotia.

20 11. Milk Moovement admits that Milk Moovement LLC is a
21 limited liability company organized and existing under the laws
22 of the State of Delaware, with its principal place of business
23 located at 370 Wabasha St. N., Saint Paul, Minnesota 55102. Milk
24 Moovement admits that Milk Moovement LLC is a foreign limited
25 liability company with a home jurisdiction of Nova Scotia. Milk
26 Moovement denies the remaining allegations in paragraph 11.

27 **JURISDICTION AND VENUE**

28 12. Paragraph 12 consists of legal conclusions, not factual

1 allegations, and no response is required. Milk Moovement
2 acknowledges that Dairy contends that this Court has subject
3 matter jurisdiction over its purported federal trade secret claim
4 generally under 28 U.S.C. § 1331 and supplemental jurisdiction
5 over the remaining claims under 28 U.S.C. § 1367. To the extent
6 a further response is required, Milk Moovement denies the
7 allegations in paragraph 12.

8 13. Paragraph 13 consists of legal conclusions, not factual
9 allegations, and no response is required. Milk Moovement
10 acknowledges that Dairy contends that the Court has personal
11 jurisdiction over both named defendants. For purposes of the
12 claims asserted in the FAC, Milk Moovement does not contest that
13 MMI and Milk Moovement LLC are subject to this Court's personal
14 jurisdiction. To the extent that a further response is required,
15 Milk Moovement denies the allegations in paragraph 13.

16 14. Paragraph 14 consists of legal conclusions, not factual
17 allegations, and no response is required. Milk Moovement
18 acknowledges that Dairy contends that venue is proper. For
19 purposes of the claims asserted in the FAC, Milk Moovement does
20 not contest that venue is proper in this District. Milk
21 Moovement is without sufficient knowledge or information to form
22 a belief as to the truth or falsity of the allegations regarding
23 the principal place of business of California Dairies, Inc.
24 ("CDI"), and therefore denies the same. Milk Moovement denies
25 the remaining allegations of paragraph 14.

26 **FACTS**

27 15. Milk Moovement denies the allegation that the time,
28 money, and expertise required to develop a software platform that

1 allows participants in the U.S. dairy industry to comply with
2 applicable regulations is a significant barrier to entry into the
3 U.S. dairy supply chain software market. Milk Moovement is
4 without sufficient knowledge or information to form a belief as
5 to the truth or falsity of the remaining allegations of paragraph
6 15, and therefore denies the same.

7 16. Milk Moovement admits that Dairy's software is used by
8 entities, such as milk processors and dairy cooperatives, and
9 that dairy cooperatives, like CDI, are entities owned by their
10 farmer-members. Milk Moovement is without sufficient knowledge
11 or information to form a belief as to the truth or falsity of the
12 remaining allegations of paragraph 16, and therefore denies the
13 same.

14 17. Milk Moovement admits that providers of supply chain
15 software for the U.S. dairy industry must understand--and ensure
16 that their software accounts for--U.S. dairy regulations. Milk
17 Moovement further admits that U.S. dairy prices are regulated
18 through sets of regulations known as Federal Milk Marketing
19 Orders ("FMMOs"). Milk Moovement is without sufficient knowledge
20 or information as to "pricing regimes in all of U.S. agriculture"
21 to form a belief as to the truth or falsity of the third sentence
22 of paragraph 17, and therefore denies the same. Milk Moovement
23 denies the remaining allegations of paragraph 17.

24 18. Milk Moovement admits the allegations contained in the
25 first three sentences of paragraph 18. Milk Moovement further
26 admits that not "paying into the pool" avoids a direct cost and
27 provides handlers with flexibility in making payments at
28 different points in the cycle. Except as expressly admitted,

1 Milk Moovement denies the allegations of paragraph 18.

2 19. Milk Moovement admits the allegations contained in the
3 first and third sentences of paragraph 19. Milk Moovement
4 further admits that handlers may be able to elect whether to
5 participate in the pool with respect to other classes of milk,
6 depending on and consistent with other FMMO regulations. Milk
7 Moovement denies the remaining allegations of paragraph 19.

8 20. Milk Moovement admits that parties make pooling
9 decisions based on particular information. Milk Moovement admits
10 that the FMMO impose rules surrounding milk pooling. Milk
11 Moovement further admits the allegations contained in the third
12 sentence of paragraph 20. Milk Moovement denies the remaining
13 allegations of paragraph 20.

14 21. Milk Moovement admits the allegations contained in
15 paragraph 21.

16 22. Milk Moovement admits that Dairy's software can be used
17 to generate reports that may be used in the FMMO compliance
18 process. Milk Moovement is without sufficient knowledge or
19 information to form a belief as to the truth or falsity of the
20 remaining allegations of paragraph 22, and therefore denies the
21 same.

22 23. The allegation that Dairy's software includes and
23 implements a methodology that is a trade secret is a legal
24 conclusion that does not require a response; to the extent a
25 response is required, Milk Moovement is without sufficient
26 knowledge or information to form a belief as to the truth or
27 falsity of the allegation and therefore denies same. Milk
28 Moovement is without sufficient knowledge or information to form

1 a belief as to the truth or falsity of the remaining allegations
2 of paragraph 23, and therefore denies the same.

3 24. The allegations in Paragraph 24 are opinion and
4 argument and require no response; to the extent a response is
5 required, Milk Moovement is without sufficient knowledge or
6 information to form a belief as to the truth or falsity of the
7 allegations of paragraph 24, and therefore denies the same.

8 25. Milk Moovement is without sufficient knowledge or
9 information to form a belief as to the truth or falsity of the
10 allegations of paragraph 25, and therefore denies the same.

11 26. Paragraph 26 consists of legal conclusions, not factual
12 allegations, and no response is required. Milk Moovement denies
13 that Dairy takes reasonable measures to protect the secrecy and
14 confidentiality of its alleged trade secrets. Milk Moovement is
15 without sufficient knowledge or information to form a belief as
16 to the truth or falsity of the remaining allegations of
17 paragraph 26, and therefore denies the same.

18 27. Milk Moovement is without sufficient knowledge or
19 information to form a belief as to the truth or falsity of the
20 allegations of paragraph 27, and therefore denies the same.

21 28. Milk Moovement is without sufficient knowledge or
22 information to form a belief as to the truth or falsity of the
23 allegations of paragraph 28, and therefore denies the same.

24 29. Milk Moovement is without sufficient knowledge or
25 information to form a belief as to the truth or falsity of the
26 allegations of paragraph 29, and therefore denies the same.

27 30. Paragraph 30 consists of legal conclusions, not factual
28 allegations, and no response is required. Milk Moovement states

1 that it has never seen the contract between Dairy and CDI, but
2 Milk Moovement admits that Dairy's purported "standard User
3 Agreement Terms and Conditions" attached as Exhibit 1 to the FAC
4 purports to contain certain restrictions and confidentiality
5 requirements. Milk Moovement denies the allegation that MMI
6 requires customers to maintain the confidentiality of the
7 software and any output from the software, and denies that
8 "Confidential Information" as defined in the attached User
9 Agreement includes the items listed in the last sentence of
10 paragraph 30. Milk Moovement is without sufficient knowledge or
11 information to form a belief as to the truth or falsity of the
12 remaining allegations of paragraph 30, and therefore denies the
13 same.

14 31. The allegation in paragraph 31 that the quoted
15 provisions restrict use of and access to Dairy's producer payroll
16 application and use and disclosure of Dairy's Confidential
17 Information is a legal conclusion, to which no response is
18 required. Milk Moovement states further that the listing of
19 quoted language is incomplete and misleading, and therefore
20 denies same. As to the remaining allegations, to the extent a
21 further response is required, Milk Moovement is without
22 sufficient knowledge or information to form a belief as to the
23 truth or falsity of the remaining allegations of paragraph 31,
24 and therefore denies the same.

25 32. Milk Moovement admits the allegations contained in
26 paragraph 32.

27 33. Milk Moovement acknowledges that CDI previously engaged
28 with Dairy for software services prior to its engagement of MMI.

1 Milk Moovement has never seen the contract between Dairy and CDI.
2 Milk Moovement is without sufficient knowledge or information to
3 form a belief as to the truth or falsity of the allegations of
4 paragraph 33, and therefore denies the same.

5 34. Milk Moovement admits the allegations contained in
6 paragraph 34.

7 35. Milk Moovement admits that CDI used Dairy's software
8 during the time that California was transitioning to the
9 California FMMO. Milk Moovement further admits that CDI licensed
10 Dairy's producer payroll application to manage the financial data
11 to pay its member-owners for milk produced. Milk Moovement
12 denies that CDI licensed Dairy's producer payroll application to
13 make pooling decisions. Milk Moovement is without sufficient
14 knowledge or information to form a belief as to the truth or
15 falsity of the allegations of paragraph 35, and therefore denies
16 the same.

17 36. Milk Moovement is without sufficient knowledge or
18 information to form a belief as to the truth or falsity of the
19 allegations of paragraph 36, and therefore denies the same.

20 37. Milk Moovement admits that during MMI's discussions
21 with CDI regarding MMI's software capabilities, CDI informed MMI
22 that it used Dairy's software. Milk Moovement denies the
23 remaining allegations in paragraph 37.

24 38. Milk Moovement admits that MMI issued a press release
25 on April 15, 2021, noting that it had secured \$3.2 million USD in
26 seed funding and planned to expand its business across the United
27 States as interest and demand for its software continued to grow.
28 Except as expressly admitted, Milk Moovement denies the

1 allegations of paragraph 38.

2 39. MMI had customers for its producer payroll application
3 outside the U.S. prior to beginning discussions with CDI, but
4 Milk Moovement admits that MMI did not have U.S.-based customers
5 for its producer payroll application at that time. Milk
6 Moovement denies the remaining allegations in paragraph 39.

7 40. Milk Moovement admits that MMI engaged in discussions
8 with CDI about CDI's needs and MMI's capabilities throughout the
9 spring and summer of 2021. Milk Moovement admits that MMI
10 discussed with CDI what kind of reporting CDI needed. Except as
11 expressly admitted, Milk Moovement denies the allegations in
12 paragraph 40.

13 41. Milk Moovement admits that MMI entered into a software
14 and services agreement with CDI in September 2021. Milk
15 Moovement is without sufficient knowledge or information to form
16 a belief as to the truth or falsity of the remaining allegations
17 of paragraph 41, and therefore denies the same.

18 42. Milk Moovement is without sufficient knowledge or
19 information to form a belief as to the truth or falsity as to
20 when CDI provided its termination notice to Dairy. Milk
21 Moovement denies that CDI and Milk Moovement had a call where
22 they discussed confidential and trade secret information
23 regarding Dairy's producer payroll application and reporting
24 capabilities. Milk Moovement admits that MMI asked CDI to share
25 reports that CDI generated with any modifications CDI manually
26 made to them, and that CDI had identified that reflected CDI's
27 own data, which it routinely provides to third parties, including
28 federal dairy regulators and its own customers. Milk Moovement

1 further admits that CDI shared reports, with any manual
2 modifications, containing CDI's own data and that CDI explained
3 how CDI used this data for its own business. Except as expressly
4 admitted, Milk Moovement denies the allegations of paragraph 42.

5 43. Milk Moovement denies the allegations in the first
6 sentence of paragraph 43. As to the second sentence of
7 paragraph 43, Milk Moovement admits that is common in the dairy
8 supply chain software industry for parties to restrict access to
9 source code. Milk Moovement denies that it is common in the
10 dairy supply chain software industry to require customers to keep
11 software output confidential. Milk Moovement is without
12 sufficient knowledge or information to form a belief as to the
13 truth or falsity of the remaining allegations of the second
14 sentence of paragraph 43, and therefore denies the same. The
15 third sentence of paragraph 43 consists of argument and requires
16 no response; to the extent a response is required, Milk Moovement
17 denies the allegations.

18 44. Milk Moovement denies the allegations of paragraph 44.

19 45. Milk Moovement denies the allegations in the first
20 sentence of paragraph 45. As to the second sentence of
21 paragraph 45, Milk Moovement is without sufficient knowledge or
22 information to form a belief as to the truth or falsity of the
23 allegations, and therefore denies the same.

24 46. Milk Moovement denies the allegations contained in
25 paragraph 46.

26 47. Milk Moovement states that MMI had a fully operational
27 producer payroll application in 2018, thus Milk Moovement denies
28 that MMI's producer payroll application was not fully operational

1 until February 2022. Milk Moovement admits that MMI agreed to
2 have CDI onboarded and fully integrated into the MMI platform,
3 with all applicable customizations, by February 2022, and that
4 this was intended to coincide with the termination of CDI's
5 access to Dairy's entire software platform. Except as expressly
6 admitted, Milk Moovement denies the remaining allegations in
7 paragraph 47.

8 48. Milk Moovement denies the allegations contained in
9 paragraph 48. MMI had a fully functional producer payroll
10 application in 2018. Milk Moovement states further that MMI's
11 producer payroll application had the capability to take in price
12 inputs and multiply those price inputs by pounds to output a
13 rate, regardless of whether the prices were provided by a FMMO.

14 49. Milk Moovement denies the allegations contained in
15 paragraph 49.

16 50. Milk Moovement admits that CDI required a producer
17 payroll application and that CDI had to comply with the FMMO.
18 Milk Moovement further states that CDI did not use Dairy's
19 software to make the pickup level pooling decisions that were
20 part of its FMMO compliance. Except as expressly admitted, Milk
21 Moovement denies the allegations contained in paragraph 50.

22 51. Milk Moovement denies the allegations contained in
23 paragraph 51.

24 52. Milk Moovement denies the allegations contained in
25 paragraph 52.

26 53. Milk Moovement denies the allegations contained in
27 paragraph 53.

28

COUNT ONE

Misappropriation of Trade Secrets in Violation of the DTSA, 18

U.S.C. § 1836 et seq.

54. In response to paragraph 54, Milk Moovement restates its responses to paragraphs 1 through 53.

55. To the extent that paragraph 55 consists of legal conclusions, not factual allegations, no response is required. Milk Moovement is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 55, and therefore denies the same.

56. To the extent that paragraph 56 consists of legal conclusions, not factual allegations, no response is required. Milk Moovement is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 56, and therefore denies the same.

57. To the extent that paragraph 57 consists of legal conclusions, not factual allegations, no response is required. Milk Moovement denies that the User Agreement attached as Exhibit 1 to the FAC prohibits sharing of the outputs of Dairy software or all reverse engineering. Milk Moovement is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations of paragraph 57, and therefore denies the same.

58. Milk Moovement denies the allegations contained in paragraph 58.

59. Milk Moovement denies the allegations contained in paragraph 59.

60. Milk Moovement denies the allegations contained in

1 paragraph 60.

2 61. Milk Moovement denies the allegations contained in
3 paragraph 61.

4 62. Milk Moovement acknowledges that Dairy seeks injunctive
5 relief in addition to damages. Milk Moovement denies the
6 allegations contained in paragraph 62, including that injunctive
7 relief is necessary or that damages are warranted.

8 **COUNT TWO**

9 **Misappropriation of Trade Secrets in Violation of CUTSA, Cal.**

10 **Civ. Code § 3426.1 et seq.**

11 63. In response to paragraph 63, Milk Moovement restates
12 its responses to paragraphs 1 through 62.

13 64. Milk Moovement admits that MMI and Milk Moovement LLC
14 are "Persons" under Cal. Civ. Code § 3426.1(c).

15 65. To the extent that paragraph 65 consists of legal
16 conclusions, not factual allegations, no response is required.
17 Milk Moovement is without sufficient knowledge or information to
18 form a belief as to the truth or falsity of the allegations in
19 paragraph 65, and therefore denies the same.

20 66. To the extent that paragraph 66 consists of legal
21 conclusions, not factual allegations, no response is required.
22 Milk Moovement denies that the User Agreement attached as
23 Exhibit 1 to the FAC prohibits sharing of the outputs of Dairy
24 software or all reverse engineering. Milk Moovement is without
25 sufficient knowledge or information to form a belief as to the
26 truth or falsity of the remaining allegations of paragraph 66,
27 and therefore denies the same.

28 67. Milk Moovement denies the allegations contained in

1 paragraph 67.

2 68. Milk Moovement denies the allegations contained in
3 paragraph 68.

4 69. Milk Moovement denies the allegations contained in
5 paragraph 69.

6 70. Milk Moovement denies the allegations contained in
7 paragraph 70.

8 71. Milk Moovement acknowledges that Dairy seeks injunctive
9 relief in addition to damages. Milk Moovement denies the
10 allegations contained in paragraph 71, including that injunctive
11 relief is necessary or that damages are warranted.

12 **COUNT THREE**

13 **California Common Law Intentional Interference with Contractual**
14 **Relations**

15 72. In response to paragraph 72, Milk Moovement restates
16 its responses to paragraphs 1 through 71.

17 73. Milk Moovement admits that CDI licensed Dairy's
18 producer payroll application. Milk Moovement denies that Dairy's
19 User Agreement attached as Exhibit 1 to the FAC restricts a
20 customer's ability to use, disclose, and access its own data.
21 Milk Moovement is without sufficient knowledge or information to
22 form a belief as to the truth or falsity of the remaining
23 allegations of paragraph 73, and therefore denies the same.

24 74. Milk Moovement denies the allegations contained in
25 paragraph 74.

26 75. Milk Moovement denies the allegations contained in
27 paragraph 75.

28 76. Milk Moovement denies the allegations contained in

1 paragraph 76.

2 77. Milk Moovement denies the allegations contained in
3 paragraph 77.

4 78. Milk Moovement denies the allegations contained in
5 paragraph 78.

6 79. Milk Moovement denies the allegations contained in
7 paragraph 79.

8 **RELIEF REQUESTED**

9 Milk Moovement denies any factual assertions and underlying
10 allegations contained in Dairy's request for relief. Milk
11 Moovement further denies that Dairy is entitled to any of the
12 relief requested.

13 **AFFIRMATIVE DEFENSES**

14 Milk Moovement asserts the following affirmative defenses in
15 response to Dairy's FAC:

16 **First Affirmative Defense**

17 Dairy's claims are barred by the doctrine of waiver.

18 For example, while Dairy has alleged that CDI improperly
19 shared with Milk Moovement certain spreadsheet reports that CDI
20 had pulled from Dairy's software, Dairy itself has admitted that
21 "some of these reports are not always kept in CDI's sole
22 possession, as they are sometimes shared with CDI's customers to
23 support CDI's sales activities."

24 As another example, while Dairy has alleged that CDI is not
25 allowed to share the spreadsheet reports with Dairy's
26 competitors, at least one Dairy employee knowingly shared a CDI
27 report pulled from Dairy's software platform with MMI.

Second Affirmative Defense

Dairy's claims are barred by the doctrines of estoppel and unclean hands.

For example, while Dairy has alleged that Milk Moovement committed trade secret misappropriation when it received from CDI certain reports pulled from Dairy's software to facilitate CDI's transition to Milk Moovement, Dairy itself had received similar information from CDI when CDI was transitioning from its old service provider to Dairy. Indeed, when CDI terminated its software service agreement with its old provider and transitioned to Dairy, CDI provided Dairy with access to CDI's data -- the same or similar data CDI supplied to MMI -- that was directly derived from the excel spreadsheets and reports obtained from the existing system. CDI provided its information to Dairy to ensure that Dairy possessed the information and formatting CDI required to help facilitate the transition. The spreadsheet reports identified by Dairy as trade secrets are the same-in all material respects-as those reports from the system CDI used prior to its transition to Dairy.

Third Affirmative Defense

Dairy's claims fail as they are barred by the terms of the applicable User Agreement between Dairy and CDI.

For example, despite Dairy's conclusory allegations to the contrary, the User Agreement does not prohibit CDI from providing spreadsheet reports of CDI's own data to Milk Moovement. The term "Confidential Information" is defined in the User Agreement as follows:

"Confidential Information" shall mean any and all Setup

1 Information, Transaction Information, Access Codes,
2 Licensed Materials, Documentation, Software, Content,
3 Modules, Configured Data, the configuration of the
4 Configured Data, flow charts, processes, prototypes,
5 sales information, know-how, trade secrets, documents,
6 third-party software licensed with or as a part of the
7 Licensed Materials or any other data relating thereto,
8 provided by one party to the other hereunder, either
9 orally, in writing, or electronically (via email, text
10 message or over the Internet). Confidential
11 Information shall also specifically include
12 communications made by Dairy.com's employees or agents
13 to User, or its Representatives, either orally, in
14 writing, or electronically (via email, text message or
15 over the Internet).

16 "Confidential Information" thus covers only information that is
17 "provided by one party to the other," and includes CDI's
18 confidential information over which Dairy can claim no rights.
19 For example, "Setup Information," "Transaction Information" and
20 "Configured Data" are all defined as the customer's ("User's")
21 data. The definition does not say that all "output" from the
22 software is Dairy's Confidential Information, as Dairy alleges.
23 Dairy is therefore left to argue that the reports CDI gave to MMI
24 are "Configured Data," "configurations of Configured Data," or
25 "documents." But "Configured Data," by definition, is CDI's
26 Confidential Information. Likewise, any "configurations" of CDI's
27 own Configured Data that CDI generated to provide to dairy
28 farmers, federal regulators and to otherwise meet CDI's business

1 needs likewise constitutes CDI's Confidential Information.

2 **Fourth Affirmative Defense**

3 Dairy's claims in Counts I and II fail because Dairy failed
4 to undertake reasonable measures to maintain the secrecy of the
5 alleged trade secret information.

6 For example, Dairy has not undertaken reasonable measures to
7 restrict users from sharing spreadsheet reports pulled from
8 Dairy's software platform with third parties, nor would it have
9 been reasonable to do so. Quite the opposite; Dairy admits that
10 "some of these reports are not always kept in CDI's sole
11 possession, as they are sometimes shared with CDI's customers to
12 support CDI's sales activities."

13 As another example, when the excel spreadsheet reports are
14 pulled from Dairy's software platform, no confidentiality legends
15 are affixed to them.

16 **Fifth Affirmative Defense**

17 Dairy's claims in Counts I and II fail because Milk
18 Moovement did not use any of Dairy's trade secret information.

19 For example, despite Dairy's conclusory allegations to the
20 contrary, CDI never used Dairy's software platform to make "pick-
21 up level pooling" decisions. Rather, CDI made its own pooling
22 decisions using its own spreadsheet with CDI's proprietary
23 algorithms, wholly separate from Dairy's software platform.

24 As another example, despite alleging that Milk Moovement
25 incorporated into its software platform Dairy's pick-up level
26 pooling methodology, MMI's software platform neither implements
27 any pick-up level pooling functionality of the type alleged by
28 Dairy to have been misappropriated, nor uses any pick-up level

1 pooling methodologies to make pick-up level pooling decisions for
2 CDI or any other customer.

3 **Sixth Affirmative Defense**

4 Dairy's claims in Counts I and II fail because MMI
5 independently developed its own producer payroll application and
6 FMMO compliance software.

7 For example, despite Dairy's conclusory allegations to the
8 contrary, the *Loads by Plant and FO* report is a commonly
9 generated report that MMI designed and implemented before working
10 with CDI. Similarly, MMI developed the *Pickups for Date Range*
11 report prior to receiving CDI's reports. The reports are simply
12 an exportable version of the pickups table in MMI's application
13 and were part of MMI's platform before it began working with CDI.

14 **Seventh Affirmative Defense**

15 Dairy's claims in Counts I and II fail because the alleged
16 trade secrets that Dairy claims were misappropriated are
17 comprised of information that does not constitute a trade secret.

18 For example, despite Dairy's allegations to the contrary, it
19 is well-known in the industry that the spreadsheet reports
20 identified by Dairy as its trade secrets are standard reports
21 commonly shared amongst a users' customers and its providers.
22 Most dairy companies use spreadsheet reports very similar to
23 those identified by Dairy as its trade secrets. Indeed, MMI
24 generated comparable reports from its systems well before
25 receiving any reports from CDI. The reports are of the type
26 regularly provided to customers without confidentiality
27 restrictions.

Eighth Affirmative Defense

Dairy's claim in Count III fails to the extent that it is superseded by the California Uniform Trade Secrets Act.

Ninth Affirmative Defense

Dairy's claim in Count III fails because CDI terminated its contract with Dairy on September 17, 2021, before Milk Moovement committed the alleged act of tortious interference – namely, requesting and receiving Dairy's confidential information from CDI.

Tenth Affirmative Defense

Dairy's claim in Count III is barred, in whole or in part, because the contract between Dairy and CDI was terminable at will and Milk Moovement did not engage in any independently wrongful act.

For example, Section 10.2 of the Agreement, titled "Termination of Entire Orders or Specific Services," states in relevant part that the Agreement "may be terminated for Convenience by either party ... at any time, upon thirty (30) days written notice, and by immediately paying a termination fee" As another example, Dairy itself threatened to terminate CDI's access to Dairy's software immediately in a December 31, 2021, letter to CDI. Thus, Milk Moovement cannot be liable for tortious interference with contract unless it engaged in an independently wrongful apart. But Milk Moovement did not engage in any independently wrongful conduct. The only provision Dairy alleges that CDI breached was an obligation "to keep the entire Dairy software suite confidential," and the only conduct that Dairy alleges caused CDI to breach this obligation was MMI's

1 "request[] that CDI provide it with confidential, non-trade
2 secret information about the structure, functionality, and
3 operation of Dairy's software." Milk Moovement's alleged trade
4 secret misappropriation cannot qualify as an independent wrongful
5 act without rendering its claim superseded by CUTSA.

6 **Eleventh Affirmative Defense**

7 Dairy's claims fail because Dairy has not suffered any
8 damages as a result of Milk Moovement's alleged conduct referred
9 to in the FAC; thus, Dairy is not entitled to any relief.

10 **Twelfth Affirmative Defense**

11 Dairy's claims for damages are barred, in whole or in part,
12 because the purported damages are speculative or uncertain.

13 **Thirteenth Affirmative Defense**

14 Dairy's claims are barred, in whole or in part, due to its
15 own conduct, acts, and omissions, including the conduct, acts,
16 and omissions alleged in MMI's Counterclaims below.

17 **Fourteenth Affirmative Defense**

18 Any right of recovery Dairy claims to have suffered were not
19 actually, proximately or materially caused by Milk Moovement's
20 alleged conduct referred to in the FAC, and Dairy therefore
21 should be barred from all recovery or relief.

22 **Fifteenth Affirmative Defense**

23 Any right of recovery that Dairy claims to have suffered is
24 barred, in whole or in part, to the extent that any loss, damage,
25 or harm that Dairy has allegedly suffered or will suffer, as
26 alleged in the FAC or otherwise, is the direct or proximate
27 result, either in whole or in part, of Dairy's own intentional,
28 reckless, negligent or careless conduct, including as alleged in

1 MMI's Counterclaims below.

2 **Sixteenth Affirmative Defense**

3 Dairy is not entitled to injunctive relief as it has, at a
4 minimum, an adequate remedy at law for the claims alleged in the
5 FAC and no irreparable injury.

6 **Other Affirmative Defenses**

7 Milk Moovement has insufficient knowledge or information
8 upon which to form a belief as to whether it may have additional,
9 as yet unstated, separate defenses available. Milk Moovement's
10 investigation into the FAC is ongoing, and Milk Moovement
11 therefore reserves the right to plead any other appropriate and
12 additional defenses that discovery or further legal analysis may
13 reveal during the course of this litigation.

14 **MILK MOOVENT, INC.'S COUNTERCLAIMS AGAINST DAIRY**

15 1. For its counterclaims against Dairy, Counterclaim-
16 Plaintiff Milk Moovement Inc. ("MMI") alleges as follows:

17 **PARTIES**

18 2. MMI is a Canadian corporation organized under the
19 Canada Business Corporations Act, with its principal place of
20 business located at 1505 Barrington Street, Suite 0100, Halifax,
21 Nova Scotia.

22 3. Dairy alleges to be a limited liability company
23 organized and existing under the laws of the State of Delaware,
24 with its principal place of business at 3801 Parkwood Boulevard,
25 Suite 300, Frisco, Texas 75034.

26 **JURISDICTION AND VENUE**

27 4. This Court has subject matter jurisdiction over MMI's
28 counterclaims because they arise under the Federal Declaratory

1 Judgment Act, 28 U.S.C. § 2201, *et seq.*, the Lanham Act, 15
2 U.S.C. § 1051, *et seq.* and the Sherman Act, 15 U.S.C. § 2.
3 Federal subject matter jurisdiction is therefore conferred by 28
4 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(b) (unfair
5 competition), 15 U.S.C. § 1121 (Lanham Act), and 15 U.S.C. § 2
6 (Sherman Act). This Court has supplemental jurisdiction over
7 MMI's state-law counterclaims under 28 U.S.C. § 1367.

8 5. Personal jurisdiction and venue in this District are
9 proper because Dairy sued MMI in this Court.

10 **FACTUAL BACKGROUND**

11 6. Historically, systems for tracking the dairy supply
12 chain were based on pen and paper. These methods were time
13 consuming and prone to error.

14 7. To help innovate and modernize the dairy supply chain
15 industry, MMI created a cloud-based software platform to connect
16 all players in the dairy supply chain, with features for
17 transportation monitoring, production tracking, quality
18 monitoring, and producer payments.

19 8. MMI and its personnel have a long history in the dairy
20 business.

21 9. For example, before founding MMI, co-founder and Chief
22 Product Officer, Jon King, was employed as a technical support
23 analyst for the Dairy Farmers of Newfoundland and Labrador from
24 July 2015 to January 2017. From January 2017 to December 2019,
25 he was the Chief Operating Officer at Vinocount, a software
26 platform for inventory management.

27 10. MMI employs several other individuals who have worked
28 at every level in the dairy industry and understand the business

1 from the dairy farm, to the milk processors, to the end
2 customers.

3 11. MMI's software is used, among other things, to keep
4 track of how much and when milk is picked up from a farm, where
5 the milk and trucks are while in transit, when the milk is
6 dropped off at a processing plant, results of the quality testing
7 (e.g., determining fat, protein, lactose and other solids),
8 payments to producers and customer invoicing. This software can
9 be accessed via computer or mobile app.

10 12. MMI offers its clients custom portals, via computer or
11 mobile app, so they can access their raw data--or calculations
12 based on that raw data--in real-time and select, sort, and
13 download their data into custom reports. This data can be
14 further manipulated, sorted, formatted, searched, or any other
15 number of functions.

16 13. The reports Dairy claims are trade secrets are similar
17 to the reports containing client data that MMI has been providing
18 to its clients since it was founded or are very standard forms
19 similar to those used by others in the industry. These reports
20 often go to third parties (including producers, plants,
21 processors, the FMMO market administrator, customers, etc.), and
22 those third parties need to be able to easily understand the
23 information the reports contain.

24 14. MMI's platform can also be used to generate invoices or
25 short forms that pull client data from the database and populate
26 specified fields on the invoice or form.

27 15. The payroll process for MMI's clients includes, among
28 other features, producer revenue sections, hauling charges,

1 deductions, producer pay, and bonus calculations. Before working
2 with CDI, MMI had other clients that run payroll with its system
3 using Monthly Milk CSV, calculate their taxes, charges
4 (penalties, stop charges, hauling charges, etc.), premiums
5 (component premiums, quality bonuses, incentives, etc.), and
6 miscellaneous items (e.g., equalization, one off items, etc.).

7 16. MMI completed its first platform installation in
8 January 2018 for Dairy Farmers of Newfoundland & Labrador.

9 17. Prior to talking with CDI about how MMI could meet
10 CDI's needs, MMI had clients in Canada and Australia and
11 experience complying with various regulatory systems.

12 18. For example, beginning in January 2021, long before
13 receiving any information from CDI, MMI began providing a
14 producer payroll system to Riverina Fresh in Australia.
15 Riverina's producer payroll system is similar to those of any
16 U.S. client, in that the system needs to accurately track in
17 real-time the milk that is produced and delivered and calculate
18 how much producers are paid for the milk. MMI's producer payroll
19 system that CDI is currently using is effectively the same as the
20 system MMI installed at Riverina.

21 **A. Dairy Has Aggressively Acquired Its Competitors**

22 19. Dairy has alleged that it has been one of the leading
23 providers of technology, services, and industry intelligence to
24 the dairy industry in the United States since 2000. Dairy
25 advertises itself as the largest provider of dairy supply chain
26 software in the United States and has stated that 80% of the
27 Dairy companies listed on the Dairy Foods' Top 100 are served by
28 Dairy.com.

1 20. Since its founding, Dairy has aggressively eliminated
2 potential competitors through strategic acquisitions. By
3 eliminating competitors who had superior software products and
4 services through purchase, Dairy has been able to continue
5 charging consumers supracompetitive prices for its inferior
6 software platform and avoid incurring the necessary investment of
7 time and resources to resolve the inherent deficiencies plaguing
8 its platform.

9 21. In 2013, for example, Dairy.com acquired Blimling and
10 Associates Inc., a dairy consulting firm, and its two sister
11 companies, Roger W. Blimling Inc. and Blimling Management
12 Services Inc. The following year, Dairy.com acquired QA Studio,
13 a quality assurance and food traceability software provider to
14 the dairy industry. And in 2018, Dairy acquired Data
15 Specialists, Inc. (DSI), which advertises that it provides
16 producer payroll, procurement, manufacturing ERP, financial and
17 warehouse/distribution management software.

18 22. In September 2019, Dairy announced that it had been
19 acquired by Banneker Partners, a San Francisco, California-based
20 private investment firm that advertises that it focuses on
21 building long-term value in software businesses through strategic
22 acquisitions. Following its acquisition by Banneker Partners,
23 Dairy increased its acquisition of competing supply chain
24 software products and services in order to further reduce
25 competition in the market.

26 23. For example, the following year, Dairy acquired
27 majority ownership of My Dairy Dashboard, which is described
28 publicly as a data analytics provider for dairy producers, after

1 reaching an agreement with cofounder Virtus Nutrition. On June
2 28, 2021, Dairy announced that it had acquired ever.ag, which is
3 publicly described as a risk-management solutions provider for
4 the dairy supply chain. This was followed in October 2021 by the
5 acquisition of Mr. Milkman, which is described publicly as a
6 last-mile dairy supply chain SaaS platform based in India.

7 24. On information and belief, Dairy completed each of
8 these acquisitions with the goal and purpose of maintaining its
9 monopoly in the market by eliminating the threat of competition
10 from competitors, thereby suppressing competition and allowing
11 Dairy to charge supracompetitive prices.

12 **B. After Learning that MMI Closed a \$3.2 Million Seed**
13 **Funding Round to Expand into the U.S. Market, Dairy**
14 **Worked with Banneker Partners to Acquire MMI**

15 25. Shortly after announcing its expansion into the U.S.
16 market, MMI received an email on September 30, 2020, from Kyle
17 Hufford, Vice President of Banneker Partners, stating: "I'm with
18 Banneker Partners, we're a private equity firm in San Francisco
19 and we own Dairy.com. We've been impressed with what you guys
20 are building and noticed the recently announced move to open an
21 office in the US. We think that there might be some interesting
22 overlaps with your on farm product and what Dairy.com does with
23 farm to plant. I'm sure you're busy building the business but it
24 would be interesting to at least kick off a dialogue. Are you
25 guys open for a quick intro call sometime in the next week or
26 so?"

27 26. In response, MMI agreed to meet with Banneker Partners
28 on October 7, 2020, and thereafter demonstrated the capabilities

1 of its software platform to Banneker Partners. On information
2 and belief, Banneker Partners arranged the meeting with MMI and
3 requested a demonstration of MMI's capabilities to determine
4 whether MMI posed a threat to Dairy's market share and, if so,
5 eliminate that threat through a strategic acquisition.

6 27. Following that demonstration and shortly after
7 publishing a press release announcing its \$3.2 million seed
8 funding round, MMI received another email from Mr. Hufford on
9 May 21, 2021, stating: "I wanted to check in from our initial
10 conversation back in October. I caught up with our CEO, Scott
11 Sexton at Dairy.com [sic], and he thought it would be great if we
12 could set up a follow up call and have him join this time. Do
13 you guys have some time in the next week or two? Thanks-."

14 28. Recognizing the meeting as a pretext for an acquisition
15 by Dairy, MMI responded to Mr. Hufford that same day by turning
16 down the invitation to meet with Dairy's CEO.

17 29. On May 24, 2021, Mr. Hufford of Banneker Partners sent
18 MMI an email response, stating: "Ok fair enough, congrats on the
19 latest capital raise and we'll check back down the road a bit."

20 **C. After Flaws in Dairy's Software Platform Cost CDI**
21 **Millions in Dumping and Discounting Loads of Milk, CDI**
22 **Decided to Transition to MMI's Superior Platform**

23 30. CDI is a milk marketing and processing cooperative co-
24 owned by more than 300 dairy families (also known as "members").
25 These members are independent, family-owned dairies located
26 throughout California.

27 31. CDI is a leading manufacturer of butter, milk powder,
28 nutritional milk powder and fluid milk products that are sold in

1 all fifty (50) states and in more than fifty (50) countries. CDI
2 produces approximately 40% of the milk volume in California, and
3 20% of the total butter manufactured in the United States. CDI
4 is the leading dairy processing cooperative in California, and
5 the second largest milk marketing cooperative in the United
6 States.

7 32. Prior to 2016, CDI used an old technology for payroll
8 processing. At the start of 2016, CDI transitioned its existing
9 data and information for payroll processing into software
10 developed by another data company. While the existing system was
11 functional, it also required a team of CDI employees to manually
12 input certain information into the system from the paper tickets
13 that were used to track members' products. At the same time, CDI
14 had other software needs for its business and, since some of
15 CDI's largest customers were using Dairy's software, CDI chose to
16 use Dairy's system to schedule raw deliveries and post product
17 availability to CDI's customers.

18 33. In or around February 2018, Dairy approached CDI and
19 marketed CDI its mobile application called Mobile Manifest that
20 would facilitate data entry into CDI's system. CDI's existing
21 software provider was developing its own mobile application at
22 the time; however, CDI decided to move forward with Dairy's
23 Mobile Manifest application. At that time, CDI planned to have
24 Mobile Manifest data integrated into its existing payroll
25 processing system.

26 34. Due to the establishment of a new Federal Milk
27 Marketing Order in June 2018, it became important to CDI's
28 business to have a fully integrated system that would work across

1 all processes. CDI believed that Dairy could deliver on such
2 promises and ultimately terminated its agreement with its
3 existing software provider based on such promises.

4 35. During the software transition process to Dairy, CDI
5 provided Dairy with access to CDI's data -- the same or similar
6 data CDI later supplied to MMI -- that was directly derived from
7 the excel spreadsheets and reports obtained from its then-current
8 software system. CDI provided its information to Dairy to ensure
9 that Dairy had all of the right information and formatting CDI
10 required to help facilitate the transition. The reports
11 generated from Dairy's system that are claimed by Dairy in this
12 lawsuit to be trade secrets are the same in all material respects
13 as those reports that were generated from the system CDI used
14 prior to its transition to Dairy.

15 36. CDI began using Dairy's software platform when the
16 transition went live on November 1, 2018. Once CDI started using
17 Dairy's platform, however, CDI quickly learned that the system
18 was not fully integrated as Dairy had promised.

19 37. CDI also experienced several other issues with Dairy's
20 platform that led CDI to search for a new software provider and,
21 ultimately, choosing MMI's superior product. For example,
22 Dairy's software platform was not fully integrated, it was only
23 interfaced. This means that once CDI's data was entered into the
24 system, it had to be pushed to other platforms. Because the data
25 push was not simultaneous, CDI and its members did not have
26 accurate data in real time. This caused CDI's members to become
27 upset and reduced their confidence in CDI to provide them with
28 accurate and correct data. Because the dairy industry is

1 federally regulated with set prices for commodities, the amount
2 that CDI pays to its members is dependent on a number of factors,
3 including the butterfat, protein, and other solids that are found
4 in the milk, as determined by third party laboratories that test
5 the milk.

6 38. CDI also had significant issues with a few of the
7 standard reports that were generated from Dairy's software
8 platform system in order to balance with its raw milk customers.
9 For instance, one of the standard reports generated from CDI's
10 data in Dairy's software platform calculated the solids-not-fat
11 ("SNF") content of the milk collected by CDI members. The SNF
12 number consists solely of adding up the protein content with the
13 other solids content of the milk. The report generated from
14 Dairy's platform, however, failed to properly report the SNF
15 content by fractions of a pound each time. CDI customers,
16 therefore, were affected by such software miscalculations and
17 began to question the validity of the data CDI provided to them.

18 39. CDI asked Dairy to fix this miscalculation, but it took
19 Dairy several months to do so. In the meantime, CDI was forced
20 to create a manual workaround to adjust the inaccuracies before
21 sending any reports to its customers.

22 40. CDI also observed several flaws in Dairy's platform,
23 including one where occasionally--and randomly--loads of milk
24 would be replicated 100+ times. As a result, there would be 100+
25 times more milk stated in a report than was actually present in
26 the system. CDI had to develop a manual process to adjust these
27 inaccuracies as well. As of December 2021, Dairy still had not
28 fixed that bug.

1 41. Because of the flaws in Dairy's platform, CDI
2 encountered large issues regarding its supply chain and was
3 forced to dump and/or discount large volumes of milk. In 2021
4 alone, CDI lost more than eight million dollars in dumping or
5 discounting loads of milk. CDI had several members complain that
6 they were missing milk and thus not getting paid for that milk
7 because these loads were not visible to them in the Dairy online
8 portal. When CDI raised this issue with Dairy, CDI was informed
9 that it would require substantial programming and financial
10 investment by CDI to fix.

11 42. Due to these issues and others, in March and April 2021
12 CDI began looking for other software providers that could offer
13 an integrated system and other capabilities.

14 43. When CDI was looking into various new software
15 providers, MMI gave a demonstration to CDI in March or April of
16 2021 showing the processes and capabilities of MMI's software
17 platform. CDI found MMI's software very attractive in three
18 important ways.

19 a. MMI's software enables CDI to have visibility of all of
20 its loads and trucks in real time using GPS and
21 Geofencing technology. It further allows anyone with
22 internet access to pull up a map, see whether the
23 trucks are going in the right direction and to the
24 proper CDI or customer plant for processing. This is
25 an important feature so that CDI can cut down on
26 inefficiencies and waste in its existing supply chain.
27 In CDI's opinion, Dairy's software platform does not
28 provide this real-time data.

1 b. MMI's software is a fully integrated system that allows
2 anyone with access to see the same data that CDI sees
3 in real-time.

4 c. MMI's software has better electronic data capture
5 capabilities, including the ability to attach images of
6 paper tickets to each record in the system.

7 44. CDI decided to use MMI's software platform due to its
8 superior capabilities.

9 45. Before entering into a contract with MMI for its
10 services, CDI had already seen MMI's fully-developed software and
11 its capabilities, and was confident in MMI's ability to satisfy
12 CDI's software needs and provide far more benefits and
13 capabilities than the software DDC provided to CDI. If CDI had
14 believed that MMI's software was still in development and needed
15 further information from CDI to complete such development, then
16 CDI would not have entered into its agreement with MMI.

17 46. Because CDI was satisfied that MMI's software would
18 increase its efficiency, it entered into a software and services
19 agreement with MMI on September 17, 2021. On that same day, CDI
20 provided notice of its intent to terminate and discontinue its
21 use of Dairy's software platform to Dairy.

22 47. As is customary with a change in software platform
23 vendors, CDI planned for the transition to take place over a
24 period of months and be completed by February 1, 2022.

25
26 //

27 //

28 //

D. After Learning that CDI Was Transitioning to MMI's Platform, Dairy Attempted to Halt that Transition by Asserting Objectively Baseless Trade Secret Misappropriation Claims Against MMI

48. On September 17, 2021, Dairy learned from CDI that it planned to terminate its agreement with Dairy and transition to MMI's software platform. Upon information and belief, Dairy also learned that CDI had entered into a software and services agreement with MMI.

49. Having failed to eliminate MMI's competitive threat by acquisition, Dairy attempted to do so through the courts by initiating a frivolous lawsuit against MMI in the Central District of California on November 29, 2021. *Dairy, LLC v. Milk Moovement, Inc., aka Milk Moovement, LLC*, Case No. 2:21-cv- 09279 (C.D. Cal.). Dairy did not file for an emergency TRO in that court. Instead, Dairy dismissed that action days later and then waited weeks to refile the same complaint in this Court on December 2, 2021.

50. Despite knowing for months that CDI intended to transition to MMI's platform by February 1, 2022, Dairy nonetheless waited to file a lawsuit until November 29, 2021, and, for no apparent reason and in violation of the Local Rules waited until Friday, December 10, 2021, to file its TRO application, providing the TRO papers via email to MMI's COO on Friday, December 10, 2021, at 3:51 p.m. (7:51 p.m. for MMI). Dairy's eleventh-hour rush to the courthouse and vexatious litigation tactics were designed to disrupt CDI's transition to

1 MMI's software platform, sow doubt into the viability of the
2 company's business, and inject chaos into the industry.

3 51. Dairy's original complaint in this Court alleged two
4 mirror image counts of trade secret misappropriation against
5 MMI – one under the Defend the Trade Secret Act ("DTSA") and the
6 other under California Uniform Trade Secret Act ("CUTSA") – based
7 on the same factual allegations: that MMI misappropriated Dairy's
8 trade secrets by requesting and receiving from CDI certain copies
9 of spreadsheet reports of CDI's own data, and Dairy's sole basis
10 for asserting those claims was a September 27, 2021, email
11 exchange between CDI and Dairy, where CDI sent MMI certain
12 spreadsheet reports of CDI's own data that it had pulled from
13 Dairy's software platform. Based on this information, Dairy took
14 the unprecedented and baseless position that the reports
15 constituted its trade secrets and accused MMI of using the
16 reports to take away Dairy's customer, notwithstanding the fact
17 that MMI received the spreadsheets beginning ten days after CDI
18 terminated its agreement and signed with Dairy, and that a former
19 Dairy employee had previously sent MMI similar spreadsheet
20 reports pulled from Dairy's software platform.

21 52. None of the information contained in the reports that
22 CDI provided to MMI is a Dairy trade secret. Rather, the reports
23 that Dairy identified as its alleged trade secrets are commonly
24 generated in the dairy industry. MMI generated comparable
25 reports from its systems well before receiving any reports from
26 CDI. The reports are of the type regularly provided to customers
27 without confidentiality restrictions. For example, the Loads by
28 Plant Report is a commonly generated report that MMI designed and

1 implemented before it started working with CDI. Similarly, MMI
2 developed the Pickups for Date Range Report process and reports
3 prior to receiving reports from CDI. The reports are simply an
4 exportable version of the pickups table in MMI's application and
5 have been part of its system since before it started working with
6 CDI.

7 53. All of the information in those reports/excel
8 spreadsheets is CDI data that CDI inputted, with the one
9 exception of load tracker numbers, which is a mere identifier
10 that CDI does not and has never used. The types of data
11 contained in the reports are types of data that are necessary to
12 the operation of CDI's business. By way of example, the
13 "Intransit Pounds" report contains information related to milk
14 that was picked up on one day, but not delivered to a customer
15 until the next day. CDI needs that information to operate its
16 business because CDI pays its members based on the date the milk
17 was picked up, but federal reporting requires CDI to only report
18 milk based on the date of delivery. This data is particularly
19 relevant for month-end accounting when milk was picked up in one
20 month, but not delivered until the next month. Such information
21 is a necessary part of operating CDI's business and it is not in
22 any way proprietary to Dairy.

23 54. The reports do not show screen shots of Dairy's
24 software platform. Nor do the reports reveal details about the
25 underlying database in Dairy's software platform, they do not
26 show any source code associated with Dairy's software platform,
27 and they do not reveal the underlying formulas or math that is
28 used to perform calculations in Dairy's software platform.

1 55. Dairy also failed to undertake any reasonable secrecy
2 measures to restrict access to the reports themselves. For
3 example, when the excel spreadsheet reports are pulled from
4 Dairy's software platform, no confidentiality legends are affixed
5 to them. As yet another example, Dairy knowingly permits reports
6 pulled from its software platform to be freely shared amongst a
7 customer's members.

8 56. It is well-known in the industry that the reports that
9 Dairy alleges to be its trade secrets are standard, commonly used
10 and not proprietary. Most dairy companies use reports and
11 spreadsheets very similar to those reports generated using
12 Dairy's software platform. Dairy's own employees have shared
13 reports pulled from Dairy's software platform with Dairy's
14 competitors. As just one example, on July 12, 2021, Dairy
15 employee Aaron Keener shared a report with MMI that was pulled
16 from Dairy's software platform used by CDI. Mr. Keener also
17 admitted that at least "some of the reports are standard to the
18 industry," without further identification.

19 57. The reports that Dairy identifies as its trade secrets
20 are not meaningfully different from those that CDI pulled from
21 its former software system and sent to Dairy when it transitioned
22 to Dairy's software platform in November 2018.

23 **a. After Failing to Obtain a TRO, Dairy Attempted to**
24 **Tamper with a CDI Witness By Threatening to Terminate**
25 **CDI's Access to Dairy's Platform Early**

26 58. On December 15, 2021, the Court denied Dairy's motion
27 for TRO, stating that Dairy had not demonstrated that it had
28 taken "reasonable measures" to keep the allegedly trade secret

1 reports a secret. The Court further found that Dairy provided
2 "no facts detailing how, if at all, plaintiff instructed CDI to
3 keep this information confidential or that the reports were at
4 the least labeled confidential." This Court also ruled that
5 Dairy had failed to show "specific facts demonstrating that
6 immediate and irreparable injury will result before the court
7 could hear a motion for preliminary injunction."

8 59. Even after this Court found that Dairy was not likely
9 to prove that the spreadsheet reports qualify as protectable
10 trade secrets, Dairy doubled down on its trade secret claims and
11 aggressively pursued a preliminary injunction against MMI.
12 Hoping to discount the testimonial evidence cited by MMI to
13 defeat a temporary restraining order, Dairy attempted to coerce
14 Dairy's Chief Financial Officer, Mr. Phil Girard, into recanting
15 and/or narrowing the scope of his December 14, 2021 declaration
16 in support of MMI's Opposition to the Temporary Restraining
17 Order, in which he stated, among other things, that "[n]one of
18 the information contained in the reports is a trade secret." As
19 one example, Dairy sent CDI a letter on December 31, 2021,
20 threatening to terminate CDI's access to Dairy's software
21 immediately, which Dairy knew would cause serious harm to CDI and
22 its members, unless Mr. Girard put in writing that his December
23 14, 2021, declaration concerned only five of the reports that CDI
24 had sent to Dairy. Although Mr. Girard believed that the
25 statements in his December 31, 2021, declaration were clear, he
26 nevertheless agreed to confirm in writing that his December 14,
27 2021, declaration concerned only the five reports listed by name
28 in paragraph 23 of his declaration so that Dairy would continue

1 providing CDI with access to the Dairy software until the
2 originally established date for termination.

3 60. After securing this written statement from Mr. Girard,
4 Dairy moved for a preliminary injunction based on a new theory of
5 trade secret misappropriation, one that now focused on the
6 *Deliveries by Plant and FO* report rather than the five reports
7 Mr. Girard had addressed in his December 14, 2021, declaration.

8 61. Despite Dairy's witness tampering and coercion,
9 Mr. Girard nevertheless submitted a sworn declaration and several
10 supporting exhibits to this Court on February 8, 2022,
11 demonstrating that the *Deliveries by Plant and FO* report is not a
12 trade secret, that it does not reveal pickup level pooling or any
13 other alleged trade secrets, and that it is not used by CDI to
14 make pickup level pooling decisions.

15 **b. After Failing to Obtain a Preliminary Injunction, Dairy**
16 **Continued to Assert Objectively Baseless Trade Secret**
17 **Misappropriation Claims Against MMI and Engaged in**
18 **Vexatious Litigation Tactics**

19 62. After the Court denied Dairy's TRO motion, MMI
20 repeatedly asked Dairy whether it would be filing an amended
21 complaint due to the deficiencies in the complaint, particularly
22 the failure to identify any protectable trade secrets and the
23 lack of sufficient particularity. Dairy declined to even try to
24 amend.

25 63. On January 18, 2022, MMI moved to dismiss Dairy's
26 original complaint in this action. Rather than defend the
27 woefully deficient allegations in its last complaint, Dairy
28 responded to MMI's Motion to Dismiss on the last possible day by

1 filing the First Amended Complaint ("FAC").

2 64. Unlike the prior complaint, the FAC does not include a
3 definition of "Trade Secrets." Rather, the FAC includes
4 historical information about Dairy, public information about the
5 Federal Milk Marketing Order ("FMMO") regulations, and a
6 discussion about pooling of fluid milk sales to harmonize milk
7 pricing. At best, the FAC describes the general subject matter
8 of the alleged trade secret as "Dairy's software includes and
9 implements a methodology for handling FMMO pooling that is unique
10 in the industry and is Dairy's trade secret."

11 65. The FAC also describes the alleged trade secret
12 information as "certain confidential, proprietary, and trade
13 secret information, including, but not limited to, the elements
14 of its producer payroll application that enable Dairy's clients
15 to make decisions about what milk to pool, accurately track their
16 pooling designations, and generate accurate reports and invoices
17 to comply with FMMOs." Although the FAC adds several non-
18 exhaustive allegations concerning the "elements" of Dairy's
19 producer payroll application, it never describes those elements
20 with any specificity, choosing instead to simply replace one
21 vague term with another by referring to them interchangeably as
22 its "pooling methodology" and "pooling functionality."

23 66. Muddying the waters even further, the FAC also alleges
24 that MMI requested and CDI provided to MMI "confidential, non-
25 trade secret, information about the structure, functionality, and
26 operation of Dairy's software" so that MMI could "create its own
27 fully functioning software application for the U.S. market."
28 Dairy provides no guidance for discerning which of the

1 information at issue in this case is trade secret and which is
2 "non-trade secret."

3 67. As a further example of Dairy's ever-changing claims of
4 trade secret misappropriation, Dairy sought to shield from public
5 view the term "pickup level pooling" in its opening brief in
6 support of its motion for preliminary injunction, suggesting that
7 the concept of pickup level pooling was somehow Dairy's
8 confidential or trade secret information. But after MMI
9 identified a Code of Federal Regulation section and other third-
10 party sources using this terminology publicly, Dairy filed its
11 reply brief without seeking a sealing order for that term.

12 68. In addition to failing to describe any purported trade
13 secret, Dairy's trade secret claims were unsupported by any facts
14 showing that MMI actually "used" any of the information that it
15 received from CDI, let alone used the alleged trade secret
16 information. Rather, Dairy admitted that it has alleged no such
17 facts, stating that "[a] reasonable opportunity for further
18 investigation or discovery *will likely show* that Milk Movement
19 then incorporated elements of Dairy's producer payroll
20 application, including its proprietary pooling functionality and
21 methods, into Dairy's software." Dairy also inexplicably added
22 Milk Movement LLC as a defendant to this suit, even though the
23 FAC includes no allegations specific to this entity.

24 69. With the lack of any protectable trade secret under
25 state or federal law, the lack of reasonable measures to maintain
26 the secrecy of any alleged trade secret, and the lack of any
27 evidence of use by MMI of any alleged trade secret, Dairy had no
28 reasonable or objective basis for asserting a claim of

1 misappropriation of trade secrets. On information and belief,
2 when Dairy filed the FAC, Dairy knew or should have known that
3 the alleged trade secret information is not protectable under
4 existing law. Neither the reports generated using Dairy's
5 software nor the pick-up level pooling functionality purportedly
6 revealed by some of those reports has ever been the subject of
7 reasonable secrecy measures. Dairy did not plead any facts in
8 the FAC to address these shortcomings after the Court found that
9 its previous complaint provides "no facts detailing how, if at
10 all, plaintiff instructed [its clients] to keep this information
11 confidential, or that the reports were at least labeled
12 confidential." The FAC's allegations of trade secret
13 misappropriation are equally deficient, as reflected in the
14 Court's denial of Dairy's Motion for Preliminary Injunction. The
15 Court found that "[Dairy] has not shown a likelihood that [it]
16 can establish it took reasonable measures under the circumstances
17 to maintain secrecy over the information in reports plaintiff
18 alleges are trade secrets."

19 70. Dairy also knew or should have known that neither the
20 concept of "pickup level pooling" nor its "pickup level pooling
21 methodology" can qualify as a trade secret. Milk handlers have
22 been pooling milk since long before supply chain software tools
23 were used in the industry. Before computers, handlers would make
24 pooling decisions manually using pen and paper.

25 71. Market-wide pooling is how dairy farmers share in the
26 benefits arising from classified pricing of milk. Pooling allows
27 farmers to receive the weighted average price of the milk, by
28 class.

1 72. It is commonly known in the industry that batches of
2 milk are pooled or depooled by plant, load, farmer, and/or
3 pickup.

4 73. The term "pickup level pooling" refers to pooling of
5 milk based on each time milk is picked up from a farm. The term
6 is commonly used throughout the industry, including in the U.S.
7 regulations that define Producer Milk. The definition at 7
8 C.F.R. section 1030.13 states: "The handler must designate, by
9 producer pick-up, which milk is to be removed from the pool. If
10 the handler fails to provide this information, the market
11 administrator will make the determination."

12 74. Standard software in this industry is used to track the
13 amount and quality of milk that is picked up from a farm, how
14 much goes to a specific plant for processing, and how much to pay
15 the farmer for the milk that was picked up from that farm. It is
16 further standard for software in this industry to provide a
17 platform that summarizes, filters, and presents all of the pickup
18 level data on a single screen (with multiple pages), and permits
19 sorting by a variety of datapoints, such as producer, date range,
20 plant, geographical group, or marketing order. These are common
21 data points that any dairy co-op in the United States would need
22 to track and report in order to comply with the FMMO. Dairy
23 producers outside the United States need the same information,
24 with the exception of the FMMO pricing.

25 75. Dairy supply chain software used in the U.S. market
26 does not calculate pricing. Rather, the FMMO calculates and
27 publishes pricing numbers monthly. The numbers that are
28 published by the FMMO are then used to calculate payments to

1 producers via a simple and straightforward process.

2 76. Because the minimum milk prices are posted publicly by
3 the FMMO, complying with the FMMO is not particularly
4 complicated.

5 77. The entire state of California, where CDI operates, is
6 deemed to be a single marketing area by the FMMO. As a result,
7 California prices and quality are uniform throughout the state,
8 adding to the ease of implementation for CDI.

9 78. During CDI's transition to MMI's system, MMI was able
10 to easily comply with the FMMO because the FMMA provided the
11 following minimum required datapoints that must be in the daily
12 weights file: (1) month/year; (2) producer number; (3) tank
13 number; (4) producer name; (5) manifest number; (6) pick up date;
14 (7) delivery date; (8) pool order number (to indicate whether the
15 producer is being pooled or not); (9) pounds; (10) fat test; (11)
16 fat pounds; (12) protein test; (13) protein pounds; (14) other
17 solids test; (15) other solids pounds; and (16) plant delivered
18 to (either plant number or name). The FMMA also sent a list of
19 data that was required to be included in the payroll file,
20 including: (1) producer number; (2) producer name; (3) address;
21 (4) pounds; (5) butterfat; (6) protein; (7) other solids; (8)
22 gross value (total gross to include premiums); (9) total
23 premiums; (10) total deduct; (11) deduct by type (for example,
24 haul, promo, coop dues, quota, assign, etc.); (12) net value; and
25 (13) advance pay. MMI did not gain a head start by receiving
26 reports from CDI because the data required to comply with the
27 FMMO is not a secret; the FMMA gives it to you.

28 79. Dairy likewise knew or should have known that the FAC's

1 allegations of misappropriation by use are false, including its
2 "information and belief" allegations that MMI incorporated into
3 its software Dairy's "pick-up level functionality" or "pick-up
4 level pooling methodology" because MMI's software platform
5 neither implements any pick-up level pooling functionality of the
6 type alleged by Dairy to have been misappropriated, or uses any
7 pick-up level pooling methodologies to make pick-up level pooling
8 decisions for CDI or any other customer. The Court found these
9 facts conclusive when it held that "plaintiff has not shown a
10 likelihood of establishing that the information was
11 misappropriated" since "the software defendant has created for
12 CDI does not make pickup-level pooling decisions for CDI." The
13 fact that CDI did not use the pick-up level pooling methodology
14 that Milk Moovement is accused of receiving from CDI and
15 misappropriating makes the allegations even more extraordinary.

16 80. The FAC's allegations of trade secret misappropriation
17 are based on nothing more than Dairy's unfounded suspicions of
18 wrongdoing by MMI and its bad faith intent to reduce competition.

19 81. Any pre-suit investigation conducted by Dairy into the
20 viability of its trade secret claims was woefully deficient.
21 Even a cursory investigation would have revealed that CDI never
22 even used Dairy's software platform to make "pick-up level
23 pooling" decisions. Rather, CDI made its own pooling decisions
24 using its own spreadsheet with CDI's proprietary algorithms,
25 wholly separate from Dairy's software.

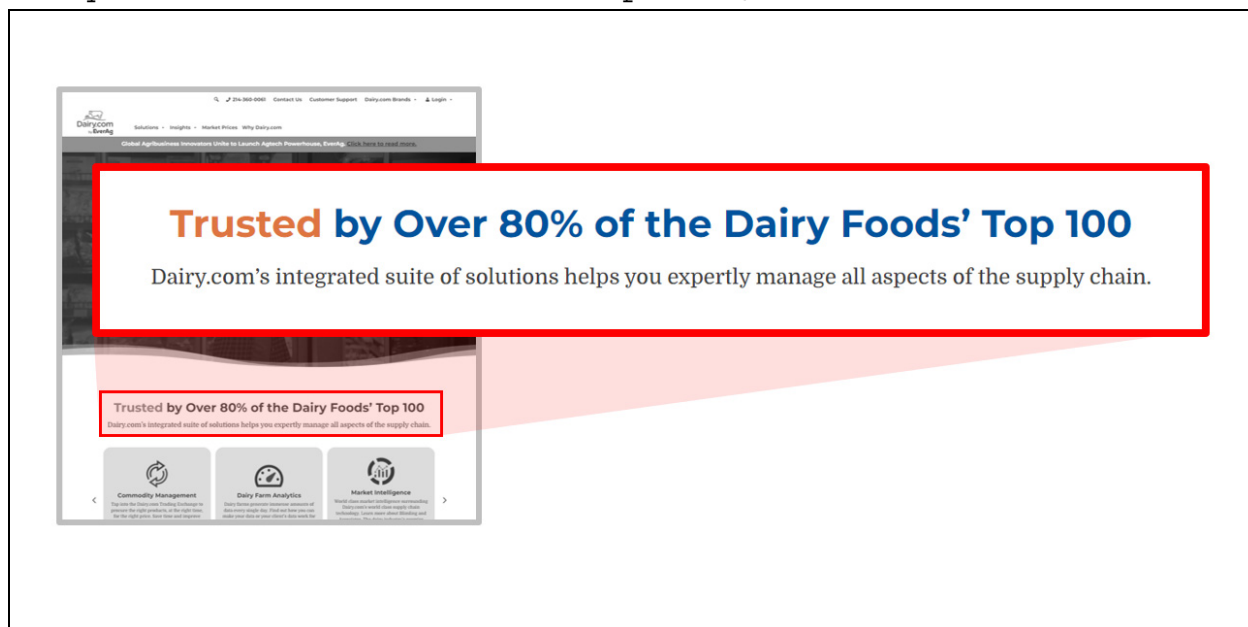
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E. Dairy Engaged in False Advertising and Deceptive Trade Practices

82. To further foreclose competition, Dairy has also engaged in a systematic campaign to falsely advertise its market share position and influence consumers' perceptions of customer satisfaction and product quality in a concerted effort to appeal to the relevant consuming public, including MMI's current and prospective customers, and persuade them to license Dairy's software platform over MMI's software platform.

83. On the homepage of Dairy's website (<https://www.dairy.com>), for example, Dairy states that its platform is "Trusted by Over 80% of the Dairy Foods' Top 100," which indicates to consumers that 80% of the Dairy Foods' Top 100 use Dairy's software platform. This statement has appeared on Dairy's website since at least April 4, 2021.



84. On information and belief, the actual percentage of Top 100 dairy companies that currently license and/or use Dairy's software platform is well below 80% because CDI, which ranks as

1 No. 10 on Dairy Foods' Top 100 List, has since terminated its
2 licensing agreement with Dairy and begun using MMI's software
3 platform.

4 85. On information and belief, Dairy has disseminated
5 similar statements to MMI's current and prospective customers.
6 For example, Dairy has publicly disseminated advertisements
7 stating that "80% of Dairy Foods' Top 100 dairy companies are
8 already working with Dairy.com" and that "80% of the Dairy Foods'
9 Top 100 is served by Dairy.com."

10 86. By using an inflated market share position amongst the
11 Top 100 Dairy companies as a focal point of its advertising,
12 Dairy's false and misleading statements have caused and will
13 continue to cause consumers to perceive Dairy's software platform
14 as being superior in terms of customer satisfaction and product
15 quality relative to the competition, including MMI's software
16 platform.

17 87. As another example, Dairy states on the homepage of its
18 website that Dairy.com's software platform "touches 100 billion
19 pounds of milk each year," which indicates to consumers that 100
20 billion pounds of milk goes through Dairy's software platform
21 each year. Variations of this statements have appeared on
22 Dairy's website since at least April 4, 2021.

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88. On information and belief, the actual pounds of milk that currently goes through Dairy's software platform is well below 100 billion because CDI, which ranks as No. 10 on Dairy Foods' Top 100 List, has since terminated its licensing agreement with Dairy and begun using MMI's software platform, and because Dairy is double-counting the pounds of milk.

89. On information and belief, Dairy has disseminated similar statements to MMI's current and prospective customers. For example, Dairy has publicly stated that "over 100 billion pounds of milk move through its systems."

90. By using an inflated market share position as a focal point of its advertising, Dairy's false and misleading statements have caused and will continue to cause consumers to perceive Dairy's software platform as being superior in terms of customer satisfaction and product quality relative to the competition, including MMI's software platform.

91. Upon information and belief, Dairy knew or should have known that the advertised percentage of companies from the Dairy Foods' Top 100 that use its software platform as well as the

1 number of pounds touched by its software platform are inaccurate.
2 Nevertheless, Dairy has continued to advertise an inflated market
3 share in order to influence MMI's current and prospective
4 customers' purchasing decisions.

5 92. Additionally, upon information and belief, Dairy's
6 false and misleading advertisements, including statements that
7 Dairy's software platform is "trusted by over 80% of the Dairy
8 Foods' Top 100" and that it "touches 100 billion pounds of milk
9 each year," actually deceived, or have a tendency to deceive, a
10 substantial segment of MMI's existing and prospective customers,
11 including, but not limited to, companies listed in the Dairy
12 Foods' Top 100 List.

13 93. Upon information and belief, Dairy has disseminated
14 other statements that are false, misleading, and/or failures to
15 disclose in connection with Dairy's software platform throughout
16 MMI's current and prospective customer base, including, but not
17 limited to, statements similar to those alleged herein.
18 Therefore, Dairy's false and misleading statements discussed
19 herein are exemplary only, and other instances of Dairy's
20 misconduct will be proven at trial.

21 94. Upon information and belief, Dairy knew or should have
22 known that its false advertisements and statements to MMI's
23 current and prospective customers contain statements that are
24 literally false, misleading, and/or failures to disclose.

25 95. Moreover, upon information and belief, the above
26 advertisements and statements by Dairy are literally false and/or
27 actually deceive, or have a tendency to deceive, a substantial
28 segment of MMI's existing and prospective customers. This

1 deception is material in that it is likely to influence the
2 purchasing decision of MMI's current or prospective customers.

3 96. The natural, probable, and foreseeable result of
4 Dairy's wrongful conduct has been to cause confusion, deception,
5 and mistake in the relevant marketplace as a whole, to deprive
6 MMI of business and goodwill, and to damage consumer perception
7 of MMI's software platform.

8 97. Dairy's wrongful conduct has resulted in increased
9 sales of its software platform. On information and belief,
10 Dairy's false and misleading advertisements also hindered sales
11 of MMI's software platform and damaged MMI's reputation and
12 goodwill in the marketplace. MMI has sustained and will continue
13 to sustain damages as a result of Dairy's false advertising and
14 deceptive trade practices.

15 **FIRST COUNTERCLAIM**

16 **Declaratory Judgment of No Protectable Trade Secret**

17 **Under 18 U.S.C. § 1836, *et seq.***

18 98. Paragraphs 1 through 97 are incorporated by reference
19 as if fully stated herein.

20 99. Dairy has alleged that certain information owned by
21 Dairy qualifies as a protectable trade secret information under
22 the Defend the Trade Secret Act, 18 U.S.C. § 1836, *et seq.*,
23 namely the spreadsheet reports that MMI received from CDI and the
24 so-called pick-up level pooling methodology implemented by
25 Dairy's software platform.

26 100. For at least the reasons stated above, none of the
27 information Dairy identifies as a trade secret qualifies as a
28 protectable trade secret information under the Defend the Trade

1 Secret Act, 18 U.S.C. § 1836, *et seq.*

2 101. Thus, an immediate, real, and justiciable controversy
3 has arisen between MMI and Dairy concerning Dairy's allegations
4 of trade secret misappropriation in violation of the DTSA.

5 102. MMI is entitled to declaratory judgment from this Court
6 that the information identified by MMI as a trade secret is not a
7 protectable trade secret under the Defend the Trade Secret Act,
8 18 U.S.C. § 1836, *et seq.*

9 **SECOND COUNTERCLAIM**

10 **Declaratory Judgment of No Misappropriation**

11 **Under 18 U.S.C. § 1836, *et seq.***

12 103. Paragraphs 1 through 102 are incorporated by reference
13 as if fully stated herein.

14 104. In its FAC, Dairy alleges that MMI has misappropriated
15 Dairy's trade secrets and confidential information in violation
16 of the Defend the Trade Secret Act, 18 U.S.C. § 1836, *et seq.*

17 105. MMI has not received any Dairy trade secrets or
18 confidential Dairy information from CDI.

19 106. MMI has never possessed, acquired, or used Dairy trade
20 secrets or confidential Dairy information.

21 107. Thus, an immediate, real, and justiciable controversy
22 has arisen between MMI and Dairy concerning Dairy's allegations
23 of trade secret misappropriation in violation of the Defend the
24 Trade Secret Act, 18 U.S.C. § 1836, *et seq.*

25 108. MMI is entitled to declaratory judgment from this Court
26 that MMI has not misappropriated and is not now misappropriating
27 Dairy's trade secrets.

THIRD COUNTERCLAIM

Declaratory Judgment of No Protectable Trade Secret

Under Cal. Civ. Code § 3426, et seq.

109. Paragraphs 1 through 108 are incorporated by reference as if fully stated herein.

110. Dairy has alleged that certain information owned by Dairy qualifies as a protectable trade secret information under the California Uniform Trade Secret Act, Cal. Civ. Code § 3426, et seq., including the spreadsheet reports that MMI received from CDI and the so-called pick-up level pooling methodology implemented by Dairy's software platform.

111. For at least the reasons stated above, none of the information Dairy identifies as an alleged trade secret qualifies as a protectable trade secret information under the California Uniform Trade Secret Act, Cal. Civ. Code § 3426, et seq.

112. Thus, an immediate, real, and justiciable controversy has arisen between MMI and Dairy concerning Dairy's allegations of trade secret misappropriation in violation of the California Uniform Trade Secret Act, Cal. Civ. Code § 3426, et seq.

113. MMI is entitled to declaratory judgment from this Court that the information identified by MMI as a trade secret is not a protectable trade secret under the California Uniform Trade Secret Act, Cal. Civ. Code § 3426, et seq.

FOURTH COUNTERCLAIM

Declaratory Judgment of No Misappropriation

Under Cal. Civ. Code § 3426, et seq.

114. Paragraphs 1 through 113 are incorporated by reference as if fully stated herein.

1 115. In its FAC, Dairy alleges that MMI has misappropriated
2 Dairy's trade secrets and confidential information in violation
3 of the California Uniform Trade Secret Act, Cal. Civ. Code
4 § 3426, *et seq.*

5 116. MMI has not received any Dairy trade secrets or
6 confidential Dairy information from CDI.

7 117. MMI has never possessed, acquired, or used Dairy trade
8 secrets or confidential Dairy information.

9 118. Thus, an immediate, real, and justiciable controversy
10 has arisen between MMI and Dairy concerning Dairy's allegations
11 of trade secret misappropriation in violation of the California
12 Uniform Trade Secret Act, Cal. Civ. Code § 3426, *et seq.*

13 119. MMI is entitled to declaratory judgment from this Court
14 that MMI has not misappropriated and is not now misappropriating
15 Dairy's trade secrets.

16 **FIFTH COUNTERCLAIM**

17 **Sham Litigation in Violation of 15 U.S.C. § 2**

18 120. Paragraphs 1 through 119 are incorporated by reference
19 as if fully stated herein.

20 121. For purposes of this litigation, the market for the
21 sale of dairy supply chain software used by dairy producers,
22 processors, and haulers in the United States (the "Relevant
23 Market") constitutes a relevant market.

24 122. Dairy has monopoly power in the Relevant Market. On
25 information and belief, Dairy controls at least 75% of the
26 Relevant Market. Dairy represents on its web site that its
27 software is used by "Over 80% of the Dairy Foods' Top 100," which
28 comprises the largest customers in the Relevant Market. It

1 further represents on its web site that "Dairy.com serves over
2 15,000 farms across the US."

3 123. Dairy has engaged in exclusionary and predatory
4 conduct, including without limitation the filing and maintenance
5 of sham litigation. Less than three months after CDI signed an
6 agreement with MMI and notified Dairy that it would be
7 terminating its license with Dairy, Dairy willfully and
8 intentionally asserted meritless claims against MMI, alleging in
9 bad faith, with no objective or subjective basis, that MMI
10 misappropriated its trade secrets. Dairy's tortious interference
11 claim is likewise objectively baseless, and brought with the
12 intention to use the litigation process itself to harm MMI,
13 specifically, and to limit competition generally.

14 124. Dairy's wrongful conduct has allowed it to maintain its
15 monopoly power, improperly impeding and delaying the entry of
16 MMI's competing system.

17 125. Dairy has caused and will continue to cause substantial
18 loss and injury to MMI due to Dairy's violation of the antitrust
19 laws. MMI has incurred substantial litigation costs and
20 attorneys' fees based on Dairy's objectively baseless claims that
21 limited its ability to compete effectively. Dairy's conduct is
22 the actual and proximate cause of the threatened loss and injury
23 to MMI.

24 126. For the reasons set forth above, no reasonable litigant
25 could realistically expect to succeed on the merits of Dairy's
26 claims against MMI, and thus Dairy's litigation and pursuit of
27 equitable relief were objectively baseless.

1 127. On information and belief, Dairy instituted its
2 meritless lawsuit against MMI as part of its overall
3 anticompetitive scheme to interfere directly with MMI's ability
4 to compete in the market, to intimidate market entrants, to raise
5 its rival's costs, to harm MMI's reputation and interfere with
6 its business relations, and to deprive MMI of resources that
7 would have otherwise been spent on offering its software platform
8 to clients at favorable prices.

9 128. As a result of this sham litigation, MMI was forced to
10 incur substantial litigation fees and costs, rather than use
11 those resources to compete against Dairy. Competition in the
12 market has thus been harmed.

13 129. Dairy's vexatious litigation strategy was successful in
14 maintaining its competitive advantage. MMI has been forced to
15 spend money and time defending against Dairy's frivolous trade
16 secret and tortious interference claims. Moreover, the lawsuit
17 has been used by Dairy to sow doubt and confusion about the
18 viability of a competing supply chain software platform. On
19 information and belief, Dairy used the existence of the lawsuit
20 in order to convince producers to stop doing business with MMI
21 (or not do business with MMI) and to convince potential and
22 actual investors to not invest in MMI, or to invest lesser
23 amounts (or on less favorable terms) than they otherwise would
24 have.

25 130. The lawsuit created confusion in the market as Dairy
26 used the lawsuit as a means to convince consumers that it would
27 win and would secure an injunction to prohibit MMI from offering
28 a competing supply chain software platform. MMI devoted

1 significant resources to the defense against these baseless
2 claims, including substantial legal costs and fees. Dairy's sham
3 litigation has made it more burdensome for MMI to provide
4 software services for its existing customers. On information and
5 belief, MMI has also lost potential customers due to Dairy's
6 objectively baseless lawsuit.

7 131. On information and belief, Dairy initiated this action
8 against MMI knowing that it could not prove the existence of a
9 protectable trade secret or that MMI used any protectable trade
10 secret. On information and belief, rather than protect its
11 alleged trade secrets or non-trade secret confidential
12 information, Dairy initiated this lawsuit to prevent CDI from
13 transitioning to MMI, prevent MMI from gaining greater traction
14 with customers in the United States, create doubt in the
15 marketplace regarding MMI's Supply Chain Software, disrupt MMI's
16 customer and investor relationships, and harm MMI's ability to
17 compete with Dairy's Supply Chain Software by forcing MMI to
18 divert resources from marketing its Supply Chain Software to
19 defend against Dairy's claims and to incur substantial legal fees
20 associated with their defenses, thereby increasing of the costs
21 MMI's products and devaluing MMI's company. On information and
22 belief, Dairy initiated this litigation to harm MMI's ability to
23 compete with Dairy's business by creating confusion and doubt
24 among MMI's potential supply chain software customers and by
25 delaying MMI's ability to grow its business in the U.S. Dairy's
26 reasons for initiating this lawsuit are evidenced by its
27 vexatious litigation tactics and continued prosecution of
28

1 meritless trade secret misappropriation and tortious interference
2 claims.

3 132. On information and belief, this conduct harmed both the
4 competitive process and consumers by allowing Dairy to charge
5 supracompetitive prices and/or to offer an inferior supply chain
6 software that did not meet the needs of consumers, and by
7 delaying the growth of a new company offering a superior software
8 product that competes with Dairy's platform.

9 133. Dairy's conduct has occurred in interstate commerce,
10 and its threatened future conduct would occur in interstate
11 commerce.

12 **SIXTH COUNTERCLAIM**

13 **False Advertising, 15 U.S.C. § 1125(a), et seq.**

14 134. Paragraphs 1 through 133 are incorporated by reference
15 as if fully stated herein.

16 135. Dairy has made and distributed, in interstate commerce
17 and in this District, advertisements that contain false and
18 misleading statements of fact regarding its market share
19 position. These advertisements contain statements that are
20 literally false, actual misstatements, and/or misleading
21 statements and failures to disclose information concerning its
22 market share position. Dairy's false and misleading statements
23 include, among others, statements that Dairy's software platform
24 is "trusted by 80% of the Dairy Foods' Top 100" and "touches 100
25 billion pounds of milk per year."

26 136. Upon information and belief, these false statements
27 actually deceive, or have a tendency to deceive, a substantial
28 segment of MMI's current and prospective customers by, for

1 example, leading such customers to perceive Dairy's software
2 platform as being superior in terms of customer satisfaction and
3 product quality relative to the competition, including MMI's
4 software platform. This deception is material in that it is
5 likely to influence the purchasing decisions of MMI's current and
6 prospective customers.

7 137. Dairy's false and misleading statements and omissions
8 injure both consumers and MMI.

9 138. Dairy's false and misleading statements and omissions
10 violate the Lanham Act § 43(a), 15 U.S.C. § 1125(a).

11 139. Dairy has caused, and will continue to cause, immediate
12 and irreparable injury to MMI for which there is no adequate
13 remedy at law. As such, MMI is entitled to an injunction under
14 15 U.S.C. § 1117 restraining Dairy, its agents, employees,
15 representatives, and all persons acting in concert with Dairy
16 from engaging in further acts of false advertising, and ordering
17 removal of all Dairy's false advertisements.

18 140. Pursuant to 15 U.S.C. § 1117, MMI is entitled to
19 recover from Dairy the damages sustained by MMI as a result of
20 Dairy's acts in violation of Lanham Act § 43(a). MMI is at
21 present unable to ascertain the full extent of the monetary
22 damages it has suffered by reason of Dairy's acts.

23 141. Pursuant to 15 U.S.C. § 1117, MMI is further entitled
24 to recover from Dairy the gains, profits, and advantages that it
25 has obtained as a result of its acts. MMI is at present unable
26 to ascertain the full extent of the gains, profits, and
27 advantages Dairy has obtained by reason of its acts.

1 142. Pursuant to 15 U.S.C. § 1117, MMI is further entitled
2 to recover from Dairy the costs of this action. Moreover, upon
3 information and belief, Dairy's conduct was undertaken willfully
4 and with the intention of causing confusion, mistake, and
5 deception, making this an exceptional case entitling MMI to
6 recover additional damages and reasonable attorneys' fees.

7 **SEVENTH COUNTERCLAIM**

8 **False Advertising, Cal. Bus. & Prof. Code § 17500, et seq.**

9 143. Paragraphs 1 through 142 are incorporated by reference
10 as if fully stated herein.

11 144. Dairy knew, or in the exercise of reasonable care
12 should have known, that its publicly disseminated statements and
13 omissions relating to Dairy's market share position were false
14 and/or misleading. Dairy's false and misleading statements
15 include, among others, statements that Dairy's software platform
16 is "trusted by 80% of the Dairy Foods' Top 100" and "touches 100
17 billion pounds of milk per year."

18 145. Upon information and belief, these false statements
19 actually deceive, or have a tendency to deceive, a substantial
20 segment of MMI's current and prospective customers by, for
21 example, leading such customers to perceive Dairy's software
22 platform as being superior in terms of customer satisfaction and
23 product quality relative to the competition, including MMI's
24 software platform.

25 146. By making such false and misleading statements, Dairy
26 has engaged in false advertising in violation of the statutory
27 laws of the state of California, Cal. Bus. & Prof. Code § 17500,
28 et seq.

1 147. By reason of Dairy's conduct, MMI has suffered injury
2 in fact and lost money or property.

3 148. Dairy has caused, and will continue to cause, immediate
4 and irreparable injury to MMI, including injury to its business,
5 reputation, and goodwill, for which there is no adequate remedy
6 at law. MMI is further entitled to an injunction restraining
7 Dairy, its agents, employees, representatives, and all persons
8 acting in concert with Dairy from engaging in further such acts,
9 and forbidding Dairy from making false and misleading statements.

10 149. MMI is further entitled to a restitutionary recovery
11 from Dairy.

12 **EIGHTH COUNTERCLAIM**

13 **Intentional Interference with Prospective Economic Advantage**

14 150. Paragraphs 1 through 149 are incorporated by reference
15 as if fully stated herein.

16 151. Prior to and during the events recounted above, MMI
17 maintained economic relationships with numerous current and
18 prospective investors, including the investment funds named
19 above, which had the probability of future economic benefit to
20 MMI based upon the likelihood of those parties' investment in
21 MMI.

22 152. Dairy was made aware of these relationships at least
23 through MMI's April 21, 2021, press release, which reported that
24 MMI had "closed on \$3.2 million in additional funding led by
25 Dynamo Ventures, and backed by Bread & Butter Ventures,
26 Matchstick Ventures, and Better Food Ventures," and that "SOSV
27 and Techstars also provided follow-on investments to the round,
28 and high-profile industry leader and member of Cargill's Board of

1 Directors, Richard Cargill, is another personal angel investor in
2 the company."

3 153. Based on this press release, Dairy knew that MMI had
4 completed its seed funding and would be seeking additional rounds
5 of funding by opting into Series A funding next. Indeed, after
6 MMI turned down a meeting with Dairy's CEO, Scott Sexton, that
7 had been organized by Kyle Hufford, Vice President at Banneker
8 Partners, MMI received an email from Mr. Hufford on May 21, 2021,
9 stating: "Ok fair enough, congrats on the latest capital raise
10 and we'll check back down the road a bit."

11 154. After MMI rebuffed this invitation, Dairy intentionally
12 acted to disrupt and harm relationships between MMI and numerous
13 potential and actual investors through a variety of acts,
14 including, but not limited to, filing and vigorously pursuing its
15 objectively baseless trade secret misappropriation claims against
16 MMI.

17 155. These acts were independently violative of numerous
18 state and federal laws, including, but not limited to, the
19 Sherman Act, the Lanham Act, and California's Business and
20 Professions Code.

21 156. Dairy's behavior caused potential and actual investors
22 to not invest in MMI, or to invest lesser amounts or on less
23 favorable terms than they otherwise would have.

24 157. As a result of Dairy's disruption of MMI's relationship
25 with potential and actual investors, MMI has suffered and will
26 continue to suffer great harm. MMI is therefore entitled to
27 compensatory damages in an amount to be determined at trial.

28

NINTH COUNTERCLAIM

Unfair Competition, Cal. Bus. & Prof. Code. § 17200, et seq.

158. Paragraphs 1 through 157 are incorporated by reference as if fully stated herein.

159. Dairy's sham litigation against MMI, tortious interference with Milk Moovement, Inc.'s investor relationships, false advertising of its market share, and its other unfair trade practices described above constitutes an unfair, unlawful, and/or deceptive trade practice.

160. Dairy's acts are in violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.

161. As a consequence of the foregoing, MMI has suffered and will continue to suffer irreparable harm and loss.

TENTH COUNTERCLAIM

Unjust Enrichment

162. Paragraphs 1 through 161 are incorporated by reference as if fully stated herein.

163. As a result of the conduct alleged herein, Dairy has been unjustly enriched to MMI's detriment. MMI therefore seeks an accounting and disgorgement of all ill-gotten gains and profits resulting from Dairy's inequitable activities.

DEMAND FOR JURY TRIAL

164. Pursuant to Fed. R. Civ. P. 38(b), Defendant and Counterclaim-Plaintiff MMI demands a trial by jury on all issues triable by a jury in this action.

PRAYER FOR RELIEF

WHEREFORE, MMI prays that the Court enter judgment in its favor and against Dairy as follows:

1 1. A judgment and order adjudicating and declaring that
2 Dairy's alleged trade secret information does not qualify as a
3 protectable trade secret under either the Defend the Trade Secret
4 Act or the California Uniform Trade Secret Act;

5 2. A judgment and order adjudicating and declaring that
6 MMI did not misappropriate Dairy's alleged trade secret
7 information in violation of either the Defend the Trade Secret
8 Act or the California Uniform Trade Secret Act;

9 3. A judgment and order adjudicating and declaring that
10 Dairy has engaged in anticompetitive behavior by initiating a
11 sham limitation against MMI in violation of 15 U.S.C. § 2.

12 4. A judgment and order adjudicating and declaring that
13 Dairy has made false, deceptive, and misleading statements of
14 fact that misrepresent its market share, consumer satisfaction,
15 and quality of its software product, in violation of 15 U.S.C. §
16 1125(a);

17 5. A judgment and order adjudicating and declaring that
18 Dairy has engaged in false and misleading advertising under the
19 laws of the State of California, Cal. Bus. & Prof. Code § 17500,
20 *et seq.*;

21 6. A judgment and order requiring Dairy to correct any
22 erroneous impression persons may have derived from concerning the
23 nature, characteristics, or qualities of the Accused Products,
24 including, without limitation, the placement of correct
25 advertising and providing written notice to the public;

26 7. A judgment and order adjudicating and declaring that
27 Dairy tortiously interfered with MMI's prospective business
28 advantage;

1 8. A judgment and order adjudicating and declaring that
2 Dairy has engaged in unfair competition in violation of
3 California's Unfair Competition Law;

4 9. A judgment and order under 15 U.S.C. § 26 permanently
5 enjoining and restraining Dairy, its subsidiaries, affiliates,
6 successors, transferees, assignees, and the respective officers,
7 directors, partners, agents, and employees thereof, and all other
8 persons acting or claiming to act on their behalf, from
9 continuing the unlawful acts in violation of the Sherman Act, the
10 Lanham Act, the California Unfair Competition Law, Cal. Bus. and
11 Prof. Code §§ 17200, *et seq.* and 17500, *et seq.*;

12 10. Damages sustained by MMI, as provided by the federal
13 and state antitrust and unfair competition laws, and a joint and
14 several judgment in favor of MMI shall be entered against Dairy
15 in an amount to be trebled in accordance with such laws;

16 11. Pre-judgment and post judgment interest at the maximum
17 legal rate;

18 12. Dairy's costs, expenses, and reasonable attorneys' fees
19 in bringing this action;

20 13. An award of punitive damages; and

21 14. Such other relief as this Court may deem just and
22 proper.

23 Dated: April 27, 2022

MORGAN, LEWIS & BOCKIUS LLP

24 By /s/ Carla B. Oakley
CARLA B. OAKLEY

25 Attorneys for Defendants
26 Milk Moovement, Inc. and
27 Milk Moovement LLC, and
28 Counterclaim-Plaintiff Milk
Moovement, Inc.